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Utah Supreme Court

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Olsen and Chamberlain; Attorneys for Respondent;

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In the
Supreme Court of the State of Utah

FILED

NOV 3 - 1958

T. FRANK SEVY,

Plaintiff and Respondent,

— vs. —

UTAH STATE FARM BUREAU
INSURANCE COMPANY,

Defendant and Appellant.

Clerk, Supreme Court, Utah

Case No. 8952

BRIEF OF RESPONDENT

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Richfield, Utah

Attorneys for Respondent

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In the Supreme Court of the State of Utah

T. FRANK SEVY,

Plaintiff and Respondent,

— vs. —

UTAH STATE FARM BUREAU
INSURANCE COMPANY,

Defendant and Appellant.

Case No. 8952

BRIEF OF RESPONDENT

STATEMENT OF FACTS

The Respondent is in substantial agreement with the facts stated by Appellant but deems it essential to add the following:

The insured automobile was not repaired but was sold

for its salvage value which, after the wreck, was \$200.00. (Tr. p. 61).

The Plaintiff paid \$2,295.00 for the automobile immediately prior to its being wrecked (Tr. p. 62, Defs. Exhibit 1). After being wrecked, the automobile was held at Pearson and Crofts' garage for repairs pending authorization by the Defendant to commence repair work (Tr. p. 61). The Defendant, although notified of the loss on April 9th (Pls. Exhibit 6) never authorized the vehicle to be repaired and therefore it was sold for salvage value of \$200.00 (Tr. p. 61).

At the commencement of the trial, counsel for the Plaintiff moved for leave to amend the Complaint to increase the amount asked from \$1,446.92 to \$2,295.00 less \$50.00 deductible under the terms of the policy (Tr. p. 4-6).

The motion was denied for lack of timeliness (Tr. p. 6).

While the car was stored at Pearson and Crofts' the repair appraisal was sent to the Defendant by which Pearson and Crofts agreed to repair the damage for \$1,446.92 (Tr. p. 58-59). The Defendant cross-examined Von Davis at length from the repair estimate the Defendant had received (Tr. p. 62-65).

Appellant claims that Von Davis did not have personal knowledge of the damage to the car and the necessity for the repairs itemized in the repair order. It was Von Davis who was driving the car when it was wrecked and he testified as to the amount of the damage and the specific parts destroyed (Tr. p. 52, 71). The wrecked, insured car, the one on which this action is based, was traded subsequently to Pearson and Crofts on another car with the agreement that

the Plaintiff repair the wrecked car turned in (Tr. p. 40 and Pls. Exhibit 7).

The policy sued on guarantees payment to the insured for “*** loss of or damage to the automobile *** by upset ***” (Pls. Exhibit I p. 1 under “Insuring Agreements” E-1).

STATEMENT OF POINTS

POINT I

THE EVIDENCE INTRODUCED WAS SUFFICIENT TO PROVE THE DAMAGES AWARDED BY THE TRIAL COURT.

ARGUMENT

POINT I

THE EVIDENCE INTRODUCED WAS SUFFICIENT TO PROVE THE DAMAGES AWARDED BY THE TRIAL COURT.

The general rule in determining damage to personal property is the difference between the market value of the automobile before it was damaged and the value of the wreckage. Vol. 15 Am. Jur. p. 530, Damages, Sec. 121 and Note 19. Angerman Co. vs. Edgemon, 76 Utah 394, 290 P. 169, 79 A.L.R. 40.

In this case the Plaintiff, on March 27, 1956, paid \$2,-295.00 for the automobile which was wrecked later that night and which was subsequently sold for \$200.00, its salvage value. (Tr. p. 61).

We submit that the trial court should have granted the

Plaintiff's motion to amend the Complaint increasing the amount of claimed damages; however, for the reason that the motion was probably not timely made, no cross-appeal was taken by the Plaintiff.

We respectfully submit that the Plaintiff has proved more than the damages awarded by the trial court and the judgment entered by the trial court, for absence of a cross-appeal, must be affirmed.

The authorities cited by the Defendant and Appellant are applicable only where the "cost of repairs" test is utilized as an alternative to the general rule allowing recovery for the difference in the reasonable market value of the car before and after the accident. In fact that is precisely expressed by the preface to the statement of authorities in the A.L.R. note cited by the Appellant on page 6 of its brief.

We submit that the reasonable market value of the automobile before and after the accident test is the one which should be employed particularly if the vehicle is so nearly destroyed as to have little salvage value left or is not repaired, and that in the case at bar no other test can apply. In all of the citations of the Appellant it is said "the proper and simple method is to prove the amount of lessened market value or the difference in the value of the property immediately preceding and following the wrong." ¹

This is what has been proved in this action.

In fact the Plaintiff has proved the damage by two means: (1) By the test of the difference in market value before and after the accident and (2) by the reasonable cost of repairs which could have restored the automobile to

¹ See page 6, last para., Appellant's Brief.

something near its former condition. All of the cases hold that the repairs must be necessary and reasonable. Von Davis testified to the amount of damage to the automobile and testified that the appraisal was prepared and itemized, part by part, by a mechanic in the garage which was under supervision of the witness (Tr.. p. 58, 59). This witness, having testified both as to the actual inspection by him of the damages sustained in the wreck and as to the repair order prepared in the garage in which he was the supervisor, (Tr. p. 58, 59, 65), has provided testimony as direct as any available concerning the "cost of repairs" alternative of appraising damages. See State vs. Davie 121 Utah 189, 240 P 2d 266, wherein it is held:

"*** another very generally established rule is that regular entries made in the course of business are admissible in evidence when a proper foundation is laid. *** It is the prerogative of the trial court to determine when such foundation is laid and sufficient showing of the credibility of the evidence is established."

CONCLUSION

In conclusion we respectfully submit that damages to the wrecked automobile have been proved under the two available alternative tests and that the evidence admitted under either theory was admissible and competent to prove damages substantially in excess of those awarded by the trial court; that therefore the trial court should be affirmed.

Respectfully submitted,

OLSEN AND CHAMBERLAIN

Attorneys for Respondent